HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.473 of 2007

Between:

K. Narayana Raju

... Appellant

And

The Deputy Commissioiner of Endowments,
Kakinada, East Godavari and others.

... Respondents

Counsel for the appellant: Shri B.S.V. Prakash Kumar

::JUDGMENT::

June 12, 2007

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to set aside order dated 6-6-2006 passed by Deputy Commissioner of Endowments, Kakinada (respondent No.1) in O.A.No.46 of 2004 for impleadment of respondent Nos.4 to 11 as parties, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

Sri Vanuvulamma Vari Temple, Akividu Village is said to have

been constructed in 19th Century by Karadi family. After enforcement of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act'), the temple along with sub-temple of Sri Ramalayam was taken over by the Endowments Department. On 15-11-1996, the appellant made an application to Assistant Commissioner of Endowments, Eluru (respondent No.2) for being recognised as member of the founder's family. By an order dated 10-1-1997, respondent No.2 recognised the appellant as member of the founder's family. Akividu Fisherman Cooperative Society (respondent No.3 herein) challenged that order by filing revision petition under Section 92 of the Act. The same was allowed by Regional Joint Director, Multi-Zone-I vide his order dated 6-5-2003 and the matter was remanded to respondent No.2 for fresh disposal of the appellant's application after taking into consideration the objections raised by respondent No.3.

After some time, the appellant filed Writ Petition No.7014 of 2004 with the complaint that respondent No.2 was not deciding his application. By an order dated 15-4-2004, a learned Single Judge disposed of the writ petition and directed respondent No.2 to transmit the case to Deputy Commissioner of Endowments, Kakinada (respondent No.1) for adjudication in terms of Section 87(1)(h) of the Act.

In compliance of the Court's order, respondent No.2 transmitted the case file to respondent No.1. The same was numbered as O.A. No.46 of 2004. On 28-11-2004, respondent Nos.4 to 11 filed an application under Order I, Rule 10 read with Section 151 of the Code of Civil Procedure (CPC) for their impleadment as parties to the O.A. Respondent No.3 filed reply dated 1-8-2005 to contest the application of respondent Nos.4 to 11. After hearing the parties, respondent No.1

passed order dated 6-6-2006, whereby he directed that the applicants (respondent Nos.4 to 11 herein) be impleaded as parties to the O.A. For the sake of reference, that order is reproduced below:

> "Counter filed by the IIIrd respondent in I.A. The 1st respondent has not filed counter. No representation. Heard arguments. Petition to implead the parties is allowed, for carrying out amendment by the petitioner in the main petition. Posted to 4-7-2006."

The appellant challenged that order in Writ Petition No.15778 of 2006 mainly on the grounds that the provisions of CPC are not applicable to the proceedings under Section 87(1)(h) of the Act and that the impugned order could not have been passed without giving him notice and opportunity of hearing.

The learned Single Judge dismissed the writ petition by observing that by virtue of Section 149(1) of the Act, the provisions of CPC are applicable to the proceedings before various authorities constituted under the Act including Deputy Commissioner.

Sri B.S.V. Prakash Kumar, learned counsel for the appellant assailed the order under challenge by arguing that the learned Single Judge committed a serious error by not considering the plea of violation of the rules of natural justice raised by the appellant. He invited our attention to the averments contained in paragraphs 6 and 7 of the affidavit filed in support of the writ petition to show that his client had specifically pleaded violation of the rules of natural justice as one of the grounds for quashing order dated 6-6-2006, and argued that failure of the learned Single Judge to deal with and decide this important issue should be treated sufficient for entertaining the appeal and nullification of order dated 6-6-2006.

We have given serious thought to the arguments of the learned

counsel. In our opinion, even though the order of the learned Single Judge does not contain enumeration of or reference to the grounds set out in the affidavit filed by the appellant for challenging order dated 6-6-2006 and the learned counsel for the appellant is right in his submission that the learned Single Judge ought to have considered and decided the plea of violation of the rules of natural justice, the present one is not a fit case for exercise of power by this Court under Article 226 of the Constitution read with Clause 15 of the Letters Patent and, therefore, we do not consider it just and proper to entertain the appeal.

Section 149, which deals with procedures and powers of the Commissioner etc., reads as under:

> "**149. Procedure and powers at enquiries under this Act:-**
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> (1) Where a Commissioner, Additional Commissioner or Regional Joint Commissioner, a Deputy Commissioner or Assistant Commissioner makes an enquiry or hears an appeal under this Act, the enquiry shall be made and the appeal shall be heard as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits or the hearing of appeals as the case may be.
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> (2) The provisions of the Indian Evidence Act, 1872 and the Indian Oaths Act, 1969, shall, so far as may be, apply to such inquiries and appeals.
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> (3) The Commissioner, Additional Commissioner or Joint Commissioner, Regional Joint Commissioner, Deputy Commissioner or Assistant Commissioner holding such an inquiry or hearing such an appeal shall be deemed to be a person acting judicially within the meaning of the Judicial Officers Protection Act, 1850."

A reading of the above reproduced provision makes it clear that the Commissioner and other officers who are entrusted with the task of making an enquiry or hearing an appeal under the Act are required to follow the procedure applicable under CPC for trial of suits or

hearing of the appeals, as the case may be. The provisions of the Indian Evidence Act have also been made applicable to such enquiries and appeals. It is, thus, evident that while exercising the power vested in him under the Act, respondent No.1 could have entertained the application filed by respondent Nos.4 to 11 under Order I, Rule 10 read with Section 151 CPC and the order passed by him cannot be quashed on the ground of lack of jurisdiction.

On the issue of violation of the rules of natural justice, we are inclined to agree with the learned counsel that respondent No.1 ought to have issued notice of the application filed by respondent Nos.4 to 11 to the appellant and passed appropriate order after giving him opportunity to contest the same. However, in the peculiar facts and circumstances of the case, we do not consider it necessary to quash order dated 6-6-2006 because violation of the rules of natural justice has not occasioned substantial failure of justice. The application filed by the appellant for being recognised as a member of the founder's family was required to be decided by respondent No.1 after making enquiry into his entitlement and considering the objection, if any raised by the members of the public. Respondent No.3 objected to the claim of the appellant by contending that the temple belongs to the community of fishermen and not to his family. There is no dispute that respondent Nos.4 to 11 also belong to the community of fishermen. Therefore, they too have a legitimate interest to contest the application made by the appellant and even if the latter had been given notice, there could be no tangible contest to the prayer made by respondent Nos.4 to 11. In any case, the order passed by respondent No.1 is not going to affect any substantive right of the appellant, who has to independently adduce evidence and

establish his right to be recognised as a member of the founder's family.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.897 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ

June 12, 2007

C.V. NAGARJUNA REDDY, J

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